

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**BIENVENIDO FRANCO, Individually and on Behalf of All Others Similarly Situated,** )  
v. )  
Plaintiffs, ) **Civ. No.: 07 CV 3956**  
 ) **(JS/AKT)**  
 )  
**IDEAL MORTGAGE BANKERS, LTD. d/b/a** )  
**LEND AMERICA, INC., MICHAEL ASHLEY,** )  
**TIMOTHY MAYETTE, HELENE DECILLIS,** )  
**MICHAEL PRIMEAU,** )  
Defendants. )

**PLAINTIFFS' MOTION IN LIMINE NO. 7**

Plaintiffs respectfully move this Honorable Court to exclude any evidence or argument concerning any Plaintiff or other employee's failure to complain about Defendants' compensation practices, or that they were happy, satisfied or content with Defendants' pay practices. Whether Defendants failed to pay for all time worked is the central issue of the case. Any purported failure by any Plaintiff to complain is irrelevant, not probative, and should be excluded under Fed.R.Evid.401, 402 & 403 because federal and state law do not require a worker to have complained at all, in order to file suit. Thus, a juror may attach undue significance to the lack of a complaint. Any agreement to work for less than that required by the FLSA is void as a matter of law. *E.g., Caserta v. Home Lines Agency, Inc.*, 273 F.2d 943, 946-947 (2d Cir. 1959).

Dated: July 15, 2013

Respectfully Submitted,

*/s/ James R. Zouras*

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**COUNSEL FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE NO. 7** was served upon the following parties via this Court's ECF filing system, this 15<sup>th</sup> day of July, 2013:

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And, electronically mailed the above mentioned on this 15<sup>th</sup> day of July, 2013 to the following address:

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*/s/ James B. Zouras*  
James B. Zouras